IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 4720 of 2005

SHESHNATH RAI
V/S
STATE & ORS.

Mr. KULDEEP MATHUR, for the appellant / petitioner

Mr. BL BHATI, DY.G.A., for the respondent

Mr. NR CHOUDHARY, for respondent no.4.

Date of Order : 12.4.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

The petitioner by this writ petition seeks to claim a direction against the respondents to be given appointment as Senior Teacher (English) by considering his candidature against the post reserved for Ex-servicemen as per the Rules of 1988 with all consequential benefits.

The case of the petitioner is that he acquired the requisite academic qualification including graduation and B.Ed., and thereafter he joined the Indian Air Force where he was enrolled on 14.5.1976, and after completing more than 21 years of service, was discharged from Air Force w.e.f. 31.5.1997. Discharge Certificate is produced as Annexure-3. The petitioner claims that under the Rajasthan Civil Services (Absorption of Ex-Servicemen) Rules, 1988

(hereinafter referred to as the Rules of 1988) ex-servicemen have been provided reservation to the extent of 12.5% of the posts in the Ministerial and Subordinate Services and 15% of the posts in Class-IV services. The case of the petitioner is that after discharge, he applied for appointment on the post of Teacher Gr.III wherein he was selected, and he joined. Appointment order is produced as Annexure-4. This was of the year 1999. Then, Advertisement Annexure-5 came to be issued for filling in the vacancies of Senior Teacher and Physical Teachers Gr.II for the Session 2003-04 by way of direct recruitment, in response thereto the petitioner applied for the post of Senior Teacher English (Boys Schools) for which 120 seats were advertised, and this advertisement also stipulated that the reservation shall be available for ex-servicemen in accordance with the State Government's order. According to the petitioner interviews were initially fixed, however, the same could not take place, and the merit list was fixed on the notice board on 13.10.2003 wherein the petitioner was shown at S.No.2. However, on account of some stay orders by this Court interviews did not take place, and on the same being vacated the interviews were fixed to be held on 28.3.2005, but then, the petitioner was not called to participate in the interview. On enquiry it was revealed that the petitioner had not been called because he has already availed the benefit of reservation of ex-servicemen while applying for appointment on the post of Teacher

Gr.III, and therefore, the same cannot be extended for appointment on the post of Senior Teacher. With these facts the present writ petition has been filed on 3.8.2005. Vide order dt. 12.8.2005 the writ petition was admitted, and today comes up for consideration of stay petition.

Reply has been filed on behalf of the state respondent practically not disputing the factual position but contending in para-8 that since the petitioner has already got the benefit of reservation while being appointed as Teacher Gr.III, therefore, he is not entitled to benefit any further, and in that regard circulars Annexures-1, 2 and 3 have been relied upon. Various other paras have also been replied, but then the substance of the contention is this only.

Respondent no.4 has also filed a reply contending that the answering respondent is not proper party in this writ petition as no relief is claimed against him, and that respondent no.4 was selected in general category, and was much above the petitioner in merit. Thus, it was prayed that as against him the writ petition may be dismissed.

After arguing the stay petition, both the learned counsel submitted that since the controversy involved is the same, instead of deciding stay petition, on these very submissions the writ petition itself may be decided

finally. Accordingly, the writ petition is being decided finally.

A look at Annexure R/1 shows that this is a communication by Soldier Welfare Department enclosing therewith the circular of the State Government dt. 7.11.1992. According to which if a candidate has once been absorbed he cannot get the benefit second time. Likewise, a communication dt. 3.6.1998 from the Director of Soldier Welfare Department has also been produced conveying that once a ex-serviceman gets employment on the basis of reservation, he is not entitled to get the benefit reservation for seeking employment over again even by leaving the first employment. A look at the provisions of the Rules of 1988 shows that under Rule 2 reservation is being provided with a non obstante clause to the extent mentioned therein, and appointment to the posts in all the Departments of the State Government as specified in the Schedule I. Schedule I Item No. 7 relates to appointment of the nature in question. Even reading the entire rules carefully it is no-where found that the reservation provided by Rule 2 is not available if the person after having been given appointment on one post, again happens to apply for direct recruitment in other department on other better post. Thus, on the face of it the communication and circulars produced by the respondents are contrary to the provisions of Rules, and cannot have the effect of

overriding the reservation made available by the Rules.

Accordingly, the writ petition as against the respondent no. 4 is, however, dismissed. But then, it is allowed against respondents no. 1 to 3, and it is directed that the respondents shall consider the candidature of the petitioner on merits at par with other candidates, and by giving benefit of reservation available under the Rules, if the petitioner stands on merit he may be given appointment. This be done within a period of two months from today. The petitioner will be entitled to emoluments from the date of actual appointment. However, he will be entitled to get the seniority with notional benefit of pay fixation from the date persons junior to him were given appointment.

(N P GUPTA),J.

/Sushil/